

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Peter KALISCH *et al.* Conf. No.: 8674
Application No.: 09/937,952 Examiner: Paul T. Chin
Filed: December 5, 2001 Art Unit: 3652
Attorney Docket No.: 592050-2018
Title: METHOD FOR THE SERIAL PICKING UP OF POUCHES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF WILLIAM S. FROMMER IN SUPPORT OF PETITION
TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION**

Sir:

I, William S. Frommer, DECLARE AND STATE THAT:

1. I am a partner at Frommer Lawrence & Haug LLP ("FLH"), a law firm that represents the assignee, Mars Incorporated by assignment of this patent application.
2. I am informed and believe that Leonard J. Santisi was counsel of record when this application entered the National Phase in the United States through filings dated September 27, 2001. Mr. Santisi was with the firm of Dorsey & Whitney LLC at that time.
3. In 2002, Mr. Santisi left Dorsey & Whitney and joined FLH at that firm's then-new office in San Diego, California.
4. A Power of Attorney dated April 15, 2003, was filed in this matter. The Power of Attorney appoints only Leonard J. Santisi, personally, as counsel of record and requests that all correspondence in this matter be directed to Mr. Santisi at the FLH address in San Diego,

California. A Return Post Card in the files of FLH indicates that the U.S. Patent & Trademark Office ("USPTO") received this Power of Attorney on April 21, 2003.

5. Based on my review of our file in this matter, I have found that the USPTO directed all correspondence to Mr. Santisi at the FLH address in San Diego after receiving this Power of Attorney until it accepted a new Power of Attorney, which was filed on August 28, 2008, and accepted by the USPTO on September 9, 2008.

6. On March 6, 2006, FLH, which was then Mr. Santisi's firm, filed a response to a Notice of Non-Compliant Amendment dated December 20, 2005. This filing, with my signature, was the last made on the applicants' behalf until the filing of the Power of Attorney and other papers on August 28, 2008.

7. Mr. Santisi died on March 15, 2006, nine days after the filing of the March 6, 2006, response.

8. The FLH office in San Diego was closed in April 2006, consequent in part to the loss of Mr. Santisi. I am further informed and believe that arrangements were made for mail addressed to the FLH office in San Diego to be forwarded to the main office of FLH in New York City. I am further informed and believe that some mail that should have been forwarded under these arrangements never reached the FLH office in New York City.

9. In January 2008, Jon E. Gordon, an associate at FLH, began reviewing FLH's files related to several matters that Mr. Santisi had been responsible for, including this one. I am informed and believe that, according to those records, the last filing in this matter had been made on March 6, 2006, and that FLH had no record of receiving an Office action or any other communication from the USPTO since then. I am informed and believe that Mr. Gordon could not see the file wrapper or any other information about this matter through PAIR.

10. I have personally reviewed FLH's electronic docket in this matter, and my review disclosed neither any record that FLH received an Office action from the USPTO in response to the filing of March 6, 2006, nor any record of receiving any other communication from the USPTO from that date until the USPTO accepted the new Power of Attorney in September 2008.

11. The interaction of FLH with the applicants and the owner of this application occurs through the German law firm of Boehmert & Boehmert. I am informed and believe that Mr. Gordon, named above, and others at FLH communicated with that firm, seeking new Powers of Attorney that would authorize FLH to proceed in this and several other matters. I am further informed and believe that after receiving incompletely executed documents on at least one occasion, FLH received completed documents, dated August 21, 2008. Those documents included a Power of Attorney in this matter, appointing the practitioners associated with the Customer Number 20,999, which is associated with FLH. The documents also included a Statement Under 37 C.F.R. § 3.73(b). These documents were filed in the USPTO on August 28, 2008.

12. In apparent response to these filings, on September 12, 2008, FLH received a Notice of Acceptance of Power of Attorney. I am informed and believe that shortly thereafter, Mr. Gordon logged on to private PAIR and discovered the Office action dated September 12, 2006 (the "Office Action"), and the Notice of Abandonment dated May 7, 2007. Both the Office Action and the Notice of Abandonment bear addresses indicating that the USPTO directed those papers to Mr. Santisi at the then-closed San Diego office of FLH.

13. I have reviewed FLH's paper and electronic records, and I have found no evidence that the Office Action or the Notice of Abandonment dated May 7, 2007, was ever received by FLH. I am informed and believe that, had either document ever been received by the firm, the usual actions in response would have included entering information about the document in the firm's electronic docketing system and placing the paper documents in the file for the associated matter. Based on these practices and the lack of any record of FLH having received either document, I believe that neither the Office Action nor the Notice of Abandonment was ever received by FLH and that no one associated with the firm had any information about either document until Mr. Gordon learned of their existence in September 2008.

14. I caused a thorough search of our file, including its file jacket and contents, to locate said Office Action, but to no avail. A search of the docket records of FLH with the PTO Base date of September 12, 2006, for Serial No. 09/937,952 also did not show any mail received for this application.

15. To the best of my knowledge and belief, the Office Action mailed in the above-identified application on September 12, 2006, has not been received by FLH, and in support of such belief, I enclose a log of all incoming mail from the USPTO with a mailing date of September 12, 2006. Had the non-received Office Action been received by this office, it would have been entered on the attached docket log, by Serial No. 09/937,952, together with all other mail from the USPTO bearing the mailing date of September 12, 2006.

16. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

17. It is therefore respectfully requested that the dismissal of the petition to revive this application be reconsidered and that this application be revived due to unintentional abandonment.

18. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,

Date: May 29, 2009



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LISA PTO BASE DATE REPORT

5/29/2009

CaseNumber	AppNumber	SubCase	Country	FileDate	ActionType	PTOBase Date
4501044028.2.US	10/761534	2	US	21-Jan-2004	US-3MON, ACTION	12-Jun-2006
4501044028.2.US	10/761534	2	US	21-Jan-2004	US-3MON, ACTION	12-Jun-2006
6300752003	11/048183		US	01-Feb-2005	US-Allowance	12-Jun-2006
6300752003	11/048183		US	01-Feb-2005	US-Allowance	12-Jun-2006
6300752003	11/048183		US	01-Feb-2005	US-Allowance	12-Jun-2006